

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: MUGASHA, J.A., WAMBALI, J.A., And SEHEL, J.A.)**

**CIVIL APPEAL NO. 87 OF 2018**

**MAGIGE NYAMOYO KISINJA ..... APPELLANT**

**VERSUS**

**MERANIA MAPAMBO MACHIWA.....RESPONDENT**

**(Appeal from Judgment of the High Court of Tanzania at Mwanza)**

**(Mlacha, J.)**

**Dated the 25<sup>th</sup> day of October, 2016**

**in**

**Misc. Land Appeal No. 147 of 2015**

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**RULING OF THE COURT**

16<sup>th</sup> & 25<sup>th</sup> February, 2021

**WAMBALI, J.A.:**

The dispute between the parties to this appeal was not settled amicably. As a result, the respondent sued the appellant in the Ward Tribunal of Kyangombe Tarime. Before the Ward Tribunal the respondent sought a declaration that he was the lawful owner of the suit premises which included the structure attached thereto which was allegedly sold to the appellant.

At the end of the day, the Ward Tribunal was satisfied with the evidence tendered by the respondent and it thus declared her as the lawful owner of the disputed suit premises. The decision, however,

aggrieved the appellant. He thus successfully appealed to the District Land and Housing Tribunal for Tarime (DLHT).

The dispute did not end there as the respondent was seriously aggrieved by the decision of the DLHT. She successfully appealed to the High Court where the decision of the DLHT was overturned.

As it were, the dispute between the parties was still alive as the appellant lodged the notice of appeal to this Court to challenge the decision of the High Court. However, as this is a third appeal, as per the requirement of the law, the appellant was required to apply before the High Court for the certificate on the point of law. He accordingly lodged Miscellaneous Land Application No. 291 of 2016. The High Court heard the said application and, in the end, the learned High Court Judge certified the following as a point of law:-

*"Whether the presiding judge was correct in law in construing the sale agreement to mean that the respondent had sold to the appellant both the land and the development thereon made and not a bare open land only."*

On the basis of that certified point of law the appellant formally approached the Court with a Memorandum of Appeal comprising three grounds of appeal. However, for the purpose of this ruling and for the

reason to be made apparent shortly, we do not intend to reproduce the respective grounds of appeal herein.

At the hearing of the appeal, both the appellant and respondent appeared in person, unrepresented.

Admittedly, the above reproduced certified point of law engaged our minds as to whether it qualifies to be a point of law or of fact. In the circumstances, we thus invited the parties to comment on our query.

At the very outset, the appellant conceded that the certified point is based on the facts which was dealt by both the DLHT and the High Court during the first and second appeals respectively. Despite that concession, the appellant adamantly implored us to hear his appeal and allow it with costs.

On her part, the respondent submitted firmly that both the DLHT and the High Court extensively dealt with the issue of the sale agreement by considering the evidence which was tendered by both parties at the Ward Tribunal before she was declared as a lawful owner of the suit premises. In her view, what the appellant placed before the High Court in an application for certificate of law was not purely based on any point of law. Moreover, she agreed with the appellant's submission that the High Court certified a point of fact and not of law. In the event, she stated that based on the concession of the appellant

that the certified point is not worth to be taken as a point of law, the appeal be dismissed with costs.

On our part, we deem appropriate to start our deliberation by considering the application for certificate on a point of law which was placed before the High Court by the appellant. According to the record of appeal, the thrust of the appellant application is found in paragraph 4 of his affidavit where he stated as follows: -

*"4. That, I believe there, exists points of law to be certified by the High Court for consideration by the Court of Appeal of Tanzania that is to say:-*

*(i) Whether or not the learned Appellate Judge was correct in holding that the Applicant and Respondent were at consensus **ad idem** in selling a bare open land and or a plot of land with the Applicant's building structures.*

*(ii) Whether or not the Appellate Judge legally properly construed that the sell agreement meant the sale of a Plot of Land, with building structures instead of a bare plot of land.*

*(iii) Whether or not the learned Appellant Judge was legally correct to believe the evidence of JULIANA IBRAHIM ODEMBA, the Village Secretary who claimed to have authorized the sale of the disputed plots of land without recording in the sale agreement, that the*

*Applicant had sold to the Respondent a Plot of land with its landed building structures”.*

Noteworthy, in paragraphs 5 and 6 of the respondent's counter affidavit, she strongly contended that no point of law was advanced by the appellant to deserve a certificate of the High Court to the effect that a point of law existed for the decision of the Court. Nevertheless, as alluded to above, the learned High Court Judge certified the point which is purely based on a matter of fact which had been adequately dealt by both the DHLT and the High Court. Essentially, it is not disputed that the certified point is a pure matter of evidence which was tendered by the parties and decided upon by the trial Ward Tribunal. Indeed, the same issue was substantially considered and decided by the DHLT and the High Court on first and second appeals respectively. It is no wonder, in our settled opinion that, before us both the appellant and the respondent conceded that what was certified by the High Court is not a point of law at all.

In the circumstances, we are settled that in the present appeal there is no point of law which has been certified by the High Court to deserve the attention of this Court.

At this juncture, we wish to reiterate what we stated in **Shangwe Mjema v. Frida Salvatory and Another**, Criminal Appeal No. 103 of 2017 (unreported) thus:-

*" It should be noted that this is a third appeal... It is a mandatory requirement that a party intending to appeal to this Court, must seek and obtain from the High Court a certificate on points of law involved in the appeal. The provisions of section 5(2) (c) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (the Act) are unambiguous on that requirement... The import of the above quoted provisions is that without a certificate on a point of law... the appeal before the Court is invalid ."*

Similarly, in **Mohamed Mohamed and Another v. Omari Khatib**, Civil Appeal No. 68 of 2011 at pages 11-13 (unreported), the Court stated as follows on what constitutes a point of law:-

*"... for instance, where there is a novel point, where the issue raised is unprecedented, where the point sought to be certified has not been pronounced by the Court before and is significant and goes to the root of the decision, where the issue at stake involves jurisdiction, where the court(s) below misinterpreted the law etc ..."*

Unfortunately, in the present appeal, gauging from the certified point reproduced above, there is nothing to qualify in the category of

matters explained by the Court in **Mohamed Mohamed and Another v. Omar Khatib** (supra).

We must emphasize that the point to be certified by the High Court must be that of legal nature and significant to warrant the decision of the Court. It is not enough for a party in a third appeal, like in the instant appeal, to simply think the lower court is wrong in its decision to have his case heard by the Court of appeal. Matters of law which the Court is called upon to determine must transcend the interest of the immediate parties in the appeal. Indeed, in some cases matters of law placed before the Court for determination are of public importance especially when an interpretation of the law is involved.

It is in this regard that in an akin situation in **Dovina N. Nkumwa v. Edwin David Hamis**, Civil Appeal No. 53 of 2017 (unreported) the Court after acknowledging that no point of law was certified by the High Court concluded as follows: -

*"We therefore hold that this appeal must be dismissed because the High Court has not certified any point of law involved in this appeal."*

In the circumstances, in the present appeal, it follows that as what was placed before the High Court by the appellant were purely factual

issues and yet the same was certified, there is no doubt that no point of law has been placed before the Court for our attention and decision.

Consequently, since it is a mandatory requirement that in a third appeal a point of law must be certified, we hold that this appeal must be dismissed, as we hereby do. We also award costs to the respondent.

**DATED** at **MWANZA** this 23<sup>rd</sup> day of February, 2021.

S. E. A. MUGASHA  
**JUSTICE OF APPEAL**

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

B. M. A. SEHEL  
**JUSTICE OF APPEAL**

This Ruling delivered on this 25<sup>th</sup> day of February, 2021 in the presence of the appellant in person and the respondent in person, is hereby certified as a true copy of the original.

  
D.R. LYIMO  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**